

In the Claims

Attached hereto please find Appendix A, a clean copy of the amended claims, and Appendix B, a marked-up copy of the amended claims.

Remarks

Reconsideration and allowance of this application are respectfully requested in light of the foregoing amendments and the following remarks.

Applicant wishes to thank the Examiner for the courtesies extended during the telephonic interview conducted June 18, 2002. The following shall serve as the Interview Summary Record.

Claim 7 has been objected to. Claim 7 has been amended to overcome the rejection. Accordingly, this objection is now moot.

Claims 2-8, 10, and 11 are rejected under §112, first paragraph. Specifically, the Examiner contends that the limitation added to Claim 2, "wherein said C₂ based polymer having a molecular weight less than 500,000" is not in the original disclosure. Applicant respectfully disagrees. In the specification at page 5, lines 17-18, Applicant discloses high density polyethylene (HDPE). Applicant contends that one of ordinary skill in the art would understand that an HDPE has a molecular weight of less than 500,000. In support thereof, Applicant

submits herewith the relevant pages of the *Plastics Engineering Handbook of the Society of the Plastics Industry, Inc.*, Fifth Edition, edited by M.L. Berins, Chapman & Hall, New York, NY (1991), pages 51-53. In the section headed "Polyethylenes," specifically at page 52 in the right hand column, various HDPEs are mentioned. HDPEs are generally known as polyethylene polymers that have a molecular weight less than a half million. Note specifically that 'high molecular weight' HDPEs are known to have molecular weights 'in the 200,000 to 500,000 range.' Also, Applicant points to EP 603500A1, cited by the Examiner, at pg. 3, lines 41-42, that states "high-density polyethylenes (viscosity-average molecular weight: 10,000 to 500,000)." Therefore, HDPEs are known, by those skilled in the art, to have 'molecular weights less than 500,000.' Applicant is entitled to make this amendment because the added information is well known to those of ordinary skill. *In re Cure*, 215 USPQ 567 (BPAI 1982). Accordingly, this rejection must be withdrawn.

Claims 2-8, 10, and 11 are rejected under §112, second paragraph, as being indefinite. During the telephonic interview, Applicant explained that the amendment to Claim 2 is not indefinite. To the contrary, Applicant intends to cover all polyolefins made from monomers having one carbon (C_1) to seven carbons (C_7), but that the polyolefin made from a C_2 monomer must have a molecular weight of less than a half million. During the telephonic interview, the Examiner

indicated that she understood the amendment and would withdraw the rejection.

Claims 1, 2, and 9 have been amended to define the range of oligomer as 'at least 20% by weight of the blend.' Support for this amendment is found in the specification at page 8, Table 4.

During the telephonic interview, the Examiner and the attorney for the Applicant discussed the §103 rejection based on JP8-20659 and the breadth of the disclosure in that reference. Applicant took the position that the upper most weight percentage disclosed in that application is 13% by weight. Applicant's basis was the disclosure at paragraph 40 in conjunction with the examples of the invention, paragraph 62-65. None of those examples shows a weight percentage of greater than 7% by weight of wax. Examiner disagreed with Applicant's position. Accordingly, Applicant offered to amend and has amended the claims so that the oligomer comprises 20% by weight of the blend. This amount of oligomer clearly distinguishes JP8-20659 because it discloses, at paragraph 40, an uppermost limit of 13% by weight wax, at paragraphs 62-65, the examples shows no more than 7% by weight of wax, and at paragraph 40, it cautions against excessively high wax contents.

In re Woodruff, 16 USPQ2d 1935, 1937 (Fed. Cir. 1990) cited by the Examiner in support of the rejection is distinguishable. In

Woodruff, the claim in question had a limitation of ">5%," whereas the prior art disclosed a range of "about 1-5%." The Court explained that the upper limit of the prior art, "about 5%," allowed amounts that would be included in the claimed range of ">5%." In the instant situation, the prior art's upper limit is 13% and the claim range is 20%. The *Woodruff* situation is not present. Accordingly, *Woodruff* is not applicable.

Moreover, the combination of JP8-20659 and EP 603500A1 cannot be combined to make obvious the claimed invention. Such a combination would require substantial modification of EP 603500A1. EP 603500A1 is clearly distinguished because of its required use of ultrahigh molecular weight polyethylene (UHMWPE). Ultrahigh molecular weight polyethylene is disclosed as having a molecular weight of greater than 500,000. See the Abstract. EP 603500A1 is directed to a porous separator 'comprising a resin composed mainly of an UHMWPE.' See the Abstract. The separator may be a blend UHMWPE and a polyolefin selected from the group consisting of polybutylene, polypropylene, and polyethylene. See Pg 3, lines 37-39. Nowhere does it mention that the separator is made with only one of the mentioned polyolefins and that the UHMWPE should be excluded. To the contrary, the skilled man would not modify a reference to make it unsuitable for its intended purpose. MPEP 2143.01. Therefore, the UHMWPE cannot be removed from EP 603500A1's teachings, and accordingly, the molecular weight limitation clearly distinguishes EP 603500A1.

In view of the foregoing Applicant respectfully requests an early
Notice of Allowance in this application.

Respectfully submitted,



Robert H. Hammer III
Attorney for Applicant
Reg. No. 31,764

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ROBERT H. HAMMER III, P.C.
13777 Ballantyne Corporate Place
Suite 250
Charlotte, North Carolina 28277
Telephone: 704-944-3215
Facsimile: 704-944-3201

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